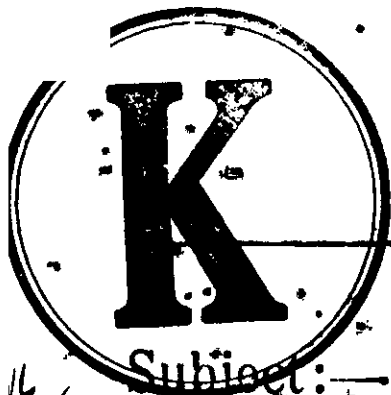


1948.

K.

File No. S. Notices

48



. Legal

DEPARTMENT

A

BRANCH

S. Notices

Papers relating to notices
of intended Suits

P. 9

File No. S. Notices
Sta. Sect. Slip 24 B a.
48

11-A

Legislative File No. 10. Notations

No.	Date/Order	Subject	Page
	As Notations 2030		
		Papers relating to notices of intended units	
1	<u>897</u> <u>1-2-1913</u>	As assumption of work of investigation and of relations	2
2	<u>1720</u> <u>10-2-13</u>	As alleged fraud of by wife Nelson etc. in purchase of unit	3-5
3	<u>3130</u> <u>11-3-13</u>	As 55 containing inquiry	7-9
4	<u>177</u> Contd. <u>11-3-13</u>	Investment units by Inter Transpore Companies	11
5	<u>1731</u> <u>11-13</u>	Sec. 4(2) abolition by Govt. of practice taken on lease or requisitioned by the Govt.	23
6	<u>1571</u> <u>10-11-13</u>	Lease of Federal Building whether private property of the Govt. of India State or State property	25

Offices of the R.L.A.

resumption of
work of
irrigation
tank at
Palanodee.

If Government considers that the two sums of Rs. 4547 and Rs. 300 are legally and properly due to the contractors for the work done by them an offer for payment of those sums in full and final settlement may be made to them. If they refuse - and it is almost certain they will - to accept the offer the payment need not be made at this stage. The question of depositing the amount in Court can be considered if and when the threatened suit is instituted.

As regards the resumption of the work of construction, the attorneys of the contractors object to it on the ground that there is a dispute between Government and the contractors on the subject of classification of the soil in which excavations were made and if the work of construction of the tank is resumed the evidence in support of the contractors' claim may be destroyed. It appears from the papers that the final classification of the soil was made by the Superintending Engineer Mr. H.P. Gurjar on 16th April 1946 and it was verified and confirmed by his successor Mr. B.S. Vyas on 21st June 1946. Under clause 30 of the conditions of the contract ~~made~~ executed by the contractors the decision of Superintending Engineer is final, conclusive and binding on all parties upon all questions relating inter alia to any claim, right, matter or thing whatsoever, in any way arising out of or relating to the contract. There would consequently be no objection to resuming the work of construction of the tank particularly having regard to the fact that no suit has as yet been instituted in spite of the expiration of the statutory period of notice. If the contractors feel aggrieved by Government's action it

will be open to them to apply to the Court for a prohibitory order.

Id/-P.B.L. 9/17

Remembrancer of Legal Affairs.

U.R. to P.B.L. No.207 dated the 6th January 1948.

KAN/15-3.
4 c.

Notice of Suit

Re: alleged fraud
by Messrs. Polson
Ltd. in purchase
of milk.

Office of the R.L.A.

The leading case on the point of fraud by an agent is *Lloyds v. Grace, Smith & Co.*, 1912, Appeal Cases, 716, where it was held that a firm of solicitors were responsible for the fraud committed by one of their representatives in the course of employment and to the contention that the firm did not benefit by the transaction, Lord Macnaghten said:-

"The only difference in my opinion between the case where the principal receives the benefit of a fraud and the case where he does not is that in the latter case, the principal is liable for the wrong done to the person defrauded by his agent acting within the scope of his agency; in the former case he is liable on that ground and also on the ground that by taking the benefit, he had adopted the act of his agent; he cannot approbate and reprobate."

The reason for this is that the principal and the agent are one in the eye of law and it does not matter which of them makes a false statement or which of them possesses the guilty knowledge.

2. In the present case, the allegations made against the company are of fraud by giving short weights. The purchase of milk by the company on behalf of Government was within the agency for which the company was appointed. If these allegations of fraud are proved, it would be open to the sellers of milk to hold Government or the Company or both liable for the loss suffered by them. Consequently, it cannot be said that Government is likely to be joined as a nominal party to the suits proposed to be filed. Government would be as much interested in fighting the litigation as the company itself, for if the claims are decreed, Government would be liable to satisfy them.

3. Settled accounts cannot, as a rule, be reopened but in particular cases, the courts may allow the principal to surcharge and falsify. If, for instance, fraud or undue interference is proved, the principal may have the accounts reopened from the beginning of the agency (Seeley's Law of Contracts, p-430). If the Company has committed any fraud at all, and thereby derived any benefit as alleged, Government would be entitled to ask the company to satisfy the decrees, if any, that would be passed in the event of the alleged fraud being proved, for the benefit of fraud has not been appropriated in the least by Government. It would, therefore, be possible to contend in the suits proposed to be filed that the Company should be made liable in the event of fraud being proved and Government's costs be awarded. But if, unfortunately such contention is not allowed to be raised in the suits, it would be open to sue separately the Company for reimbursement of the compensation and costs which Government would be ultimately liable to pay in these suits. Government will have, therefore, to take steps to file appearance in these suits and contend that Government should not be made liable for the claims even if proved because Government has not appropriated the benefit of fraud, if any.

Id/-P.M.L. 15/2

Remembrancer of Legal Affairs.

U.R. to Milk Commr. No.1710 dated the 20th February 1943.

Office of the S. L. A.

Notice of suit.
Continuing Injury.
The Indian Limitation
Act, 1908.

Section 23.

In suit No. 213 of 1935, the plaintiff claimed compensation for the damage caused by the act of Government to his Banana, pomegranate and lemon plantations. The damages were assessed on the basis of the loss of income from these plantations from year to year for 3 years prior to the date of the institution of that suit, presumably on the ground that the act of Government deprived the plaintiff from realising the income of those plantations every year. The cause of action was said to be a continuing one. The judgment of the lower Court shows that damages were awarded to the plaintiffs on the basis of the annual income for 3 years and that part of the lower court's decree was confirmed by the High Court. The lower Court further issued an injunction to Government to do everything possible to divert the stagnant water from the plaintiff's lands and to prevent the underground percolation from the canal embankment within six months. This part of the lower court's decree was modified by the High Court by issuing a general injunction to Government, directing them within six months to take such steps as will make the drainage of the plaintiff's land as effective as it was before the construction of the canal, or in the alternative to take steps to acquire the plaintiff's land. The granting of the injunction and the direction to acquire land

show that the cause of action was treated as a continuing one, otherwise a decree awarding pecuniary compensation for the damage to the same would have been sufficient.

If, therefore, the injury is a continuing one, it gives rise to a new cause of action from time to time and can be the subject of successive suits, e.g. continuing nuisance. "Then the act of the defendant is a continuing injury, its continuance after the date of the first action is a new cause of action for which a second action can be brought and so from time to time until the injury is discontinued" (Salmond: Law of Torts, p. 135). In England, under Order 36, Rule 53 of the Rules of the Supreme Court, in such an action, damages will represent the loss sustained upto the date of the decree. The damages are moreover recovered only for past and not for prospective injury (ibid 135-136). In the previous suit, the damages awarded represent the plaintiff's loss of income for the eight years next preceding the date of the suit. No damages were awarded for the loss during the pendency of the suit. In their notice, the plaintiffs claim compensation for the loss of income from 1935 to 1946 at the rate awarded in the previous suit. The claim or any part of it will not be barred by Article 36 of the Limitation Act. The injury being a continuing one, the suit would be governed by section 23 of the Limitation Act (I.L.R. 6, Cal.p.394 at p.404-406; I.L.R. Bom. p.20; 1886 Bom. P.J.p.79; I.L.R. 28 Madras, p.720).

2. The plaintiffs' claim for compensation for the period during which the previous litigation was pending and upto the date of the acquisition of the suit land by Government, would therefore be maintainable.

Compensation is claimed at the rate awarded in the previous suit. The judgment of the trial court shows that the matter of assessing the damages had been entrusted to the Horticulturist to the Government of Bombay who, after a personal inspection, gave estimates of the damage for 5 years. In accepting the figures given by that officer, the trial judge observed as follows:-

"I do not see any reason to discredit his estimates as they proceeded from a responsible Government Officer and who is expert in that science. I therefore take them as my basis and work out the estimates proportionately for 5 years since 1926 to 1933. They amount to Rs. 7010/- in all."

It is suggested that this case may be settled by offering the plaintiffs reasonable compensation in respect of the loss of income for the period subsequent to the institution of suit No. 218 of 1935 by making fresh estimates, if necessary.

14/-P.H.L. 30/3

Remembrancer of Legal Affairs.

U.R. to P.U.D. No. 3120, dated 31st March 1936.

Confidential
IMMEDIATE-

No.227, Conf1.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 14th May 1943.

Subject:- Threatened Suits by Motor
Transport Companies.

MEMORANDUM.

The District Government Pleader, Poona, is informed that Messrs. K. J. Kale and Co., Solicitors, have given statutory notices of suits on behalf of their clients, (1) Poona-Nagar Motor Transport Co. Ltd. (2) Shree Krishna Motor Service Ltd. and (3) Madina Motor Service Ltd. contending that the several amendments introduced in the Motor Vehicles Act, 1939 in its application to the Province of Bombay, by Bombay Act VII of 1947 are ~~in~~ ultra-vires and that the refusal of Government to renew, after 31st May 1943, the several stage carriage permits held by their clients and the declaration of Government to cancel the said permits from 31st May 1943 is illegal and ultra-vires. It is apprehended that the plaintiffs will file suits immediately on the expiry of the statutory period of notice and apply for an ex-parte order of interim injunction against Government. It is possible that the court may not issue an ex-parte injunction without issuing notice to Government. But the District Government Pleader, Poona is requested to keep a watch over the institution of these threatened suits and as soon as they are instituted, to appear on behalf of Government without waiting for summons or notice, and oppose the application for interim injunction principally on the ground (1) that all the temporary stage carriage permits having expired on 31st May 1943 the plaintiffs

will have no case so far at least as interim relief is concerned, and (2) that whatever injury the plaintiffs may sustain by reason of the refusal to grant an interim injunction is capable of being adequately relieved by grant of pecuniary compensation (see Specific Relief Act, section 64 clause (c)).

Ed.

For Remembrancer of Legal Affairs.

To

The District Government Pleader,

Poona.

Copy to

The Home Department,

The Provincial Motor Transport Controller,

Bombay.

U.O. No. to H.D. No. 4600 Dt. 15/5/45.

KAN/18-5.

4. 0.

Office of the R.L.A.

Bombay
rents,
Hotel and
Lodging
House Rates
Control
Act, 1947.

Sec-4(1),

Section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that this Act shall not apply to any premises belonging to Government or local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government. The 1st floor of the building belonging to Mr. S.S. Seickand has been sublet by Government to Hooda. Consequently, the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 will not apply to the sub-tenancy and Mr. Hooda would not be entitled to claim any protection of the said Act. If Government desires to oust him, it can do so through the Civil Court after terminating the sub-lease.

sd/- P.M.L.A.

Remembrancer of Legal Affairs.

U.R. to Dir. of Publicity, Bombay, No.3268, dated

8-4-1948.

KAE/15-6.
A.C.

Opinion of the S. L. A.

Lessee of
Patdi
Building

Notice of
suit.

The main question for consideration is whether building in question is the private property of Chief of Patdi State or the State property. The party interested in contesting the claim is the Saurashtra Government. That Government may therefore be invited of the notice given by the Chief and requested to examine the legal position in the light of the merger agreement; and in case that Government does not concede the claim of the Chief, the only course open to this Government would be to file an interpleader suit.

10/-Patdi. 15/11

Remembrancer of Legal Affairs.

U.R. to H.D., No.10711, dated the 15th November 1948.

KAN/13-5.
4 c.